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) No. CV 09-116-PHX-NVW (MHB)

ORDER

and
CERTIFICATE OF APPEALABILITY
AND IN FORMA PAUPERIS STATUS

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1 timely objection also means that error may not be assigned on appeal to any defect in the
2 rulings of the Magistrate Judge on any non-dispositive matters. Fed. R. Civ. P. 72(a) (“A
3 party may serve and file objections to the order within 14 days after being served with a copy
4 [of the magistrate’s order]. A party may not assign as error a defect in the order not timely
5 objected to.”); *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996); *Philipps*
6 *v. GMC*, 289 F.3d 1117, 1120-21 (9th Cir. 2002).

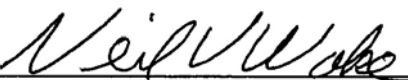
7 Notwithstanding the absence of an objection, the court has reviewed the R&R and
8 finds that it is well taken. The court will accept the R&R and dismiss the Petition. *See* 28
9 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole or
10 in part, the findings or recommendations made by the magistrate”).

11 IT IS THEREFORE ORDERED that Report and Recommendation of the Magistrate
12 Judge (Doc. #24) is accepted.

13 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying and
14 dismissing petitioner's Second Amended Petition for Writ of Habeas Corpus filed pursuant
15 to 28 U.S.C. § 2254 (Doc. #12) with prejudice. The Clerk shall terminate this action.

16 Having considered the issuance of a Certificate of Appealability from the order
17 denying Petitioner’s Petition for a Writ of Habeas Corpus, the Court FINDS: Certificate of
18 Appealability and leave to proceed *in forma pauperis* on appeal are **Denied**. Petitioner has
19 not made a substantial showing of the denial of a constitutional right.

20 DATED this 20th day of May, 2010.

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24 Neil V. Wake
United States District Judge
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